

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**THERESA ANN TANNAHILL**

## Claimant

VS.

**HOLIDAY RESORT, INC.**

Respondent

AND

# DIAMOND INSURANCE COMPANY

## Insurance Carrier

Docket No. 1,012,990

## ORDER

Respondent appeals from the March 11, 2004 preliminary hearing Order of Administrative Law Judge Brad E. Avery. Claimant was awarded medical benefits to claimant's upper extremities with Dr. Ketchum as the treating physician until further order.

## ISSUES

Did claimant suffer accidental injury arising out of and in the course of her employment to her upper extremities on the date alleged?

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed.

Claimant suffered accidental injury on September 4, 2003, when, while lifting a patient from a chair into a bed, she experienced a sudden onset of pain in her back. Respondent does not dispute the fact that claimant injured her back on that date as described. However, claimant also alleges that she injured her upper extremities, involving her bilateral hands, her right wrist and her left elbow. Respondent denies any upper extremity involvement from the accident.

Claimant completed an incident report dated September 4, 2003, in which she describes experiencing back pain and describes specifically the incident involved. This form, marked as Claimant's Exhibit 3, is similar to one provided and marked as Claimant's Exhibit 2 at the preliminary hearing, titled Employee's Incident Report. That report, dated September 11, 2003, was also filled out by claimant and describes pain in the mid to lower back. Neither form mentions any upper extremity involvement. However, claimant testified that she told her on-duty nurse and Leighton E. York (the nurse practitioner to whom she was referred) about the upper extremity problems. Claimant testified that she was advised by respondent's charge nurse that she had to redo her accident report, omitting any reference to the upper extremities, as claimant was advised by the charge nurse that claimant did not hurt her upper extremities at work.

Additionally, claimant testified that she told Mr. York of her upper extremity complaints, but he advised her he was only authorized to treat the back. The medical reports provided, marked as Respondent's Exhibit A, are the medical reports from Mr. York dated September 16 and 29, 2003. Both discuss claimant's ongoing back problems, but fail to mention any upper extremity symptoms.

While the injury reports and the medical reports contradict claimant's testimony regarding upper extremity involvement, claimant's testimony that she was prohibited from claiming the upper extremity injuries by respondent's charge nurse and her claim that Mr. York refused to treat her, being authorized only to treat the back, is uncontradicted.

Additionally, the Administrative Law Judge had the opportunity to view claimant's testimony in person and assess her credibility while providing that testimony. As none of respondent's representatives nor Mr. York testified in this matter, claimant's allegations regarding the apparent pressure placed upon her is uncontradicted. The Board feels confident that these disputes can be clarified through testimony at the regular hearing. However, for purposes of preliminary hearing, the Board finds claimant has satisfied her burden of proving that she suffered accidental injury to her upper extremities arising out of and in the course of her employment on September 4, 2003. Therefore, the Order of the Administrative Law Judge granting her ongoing medical care for those upper extremities is affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Brad E. Avery dated March 11, 2004, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 2004.

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BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant  
Edward D. Heath, Jr., Attorney for Respondent  
Brad E. Avery, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director